

1 Ronald Wilcox, State Bar No. 176601  
2 Attorney at Law  
2 2160 The Alameda, Suite F, 1st Floor  
3 San Jose, California 95126  
3 Telephone Number: (408) 296-0400  
4 Facsimile Number: (408) 296-0486  
4  
5 Attorney for Plaintiff

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6 **UNITED STATES DISTRICT COURT**  
7 **NORTHERN DISTRICT OF CALIFORNIA**  
7 **SAN JOSE DIVISION**

8 JASON MUSSYNSKI,  
9 Plaintiff,  
10 v.  
11 PHILLIPS & BURNS, LLC, ANGELA  
12 PRICE, and ANGELA RUSSO,  
13 Defendants.

14 Case No. \_\_\_\_\_

15 **COMPLAINT**

16 **COMPLAINT**

17 **DEMAND FOR JURY TRIAL**

18 **I. INTRODUCTION**

19 1. This is an action for damages brought by consumers for Defendants' violations of the  
20 Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") and  
21 California's Rosenthal Fair Debt Collection Practices Act, Civil Code § 1788 *et seq.*  
22 (hereinafter, "state Act"), which prohibit debt collectors from engaging in abusive,  
23 deceptive and unfair practices. Plaintiff alleges that Defendants sent letters that were  
24 false, deceptive, and misleading, in violation of the debt collection laws.  
25

- 1  
2. According to 15 U.S.C. § 1692:
- 3  
(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt  
4 collection practices by many debt collectors. Abusive debt collection practices  
contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs,  
and to invasions of individual privacy.
- 5  
(b) Existing laws and procedures for redressing these injuries are inadequate to protect  
6 consumers.
- 7  
(c) Means other than misrepresentation or other abusive debt collection practices are available  
for the effective collection of debts.
- 8  
(d) Abusive debt collection practices are carried on to a substantial extent in interstate  
9 commerce and through means and instrumentalities of such commerce. Even where  
abusive debt collection practices are purely intrastate in character, they nevertheless  
10 directly affect interstate commerce.
- 11  
(e) It is the purpose of this title to eliminate abusive debt collection practices by debt  
12 collectors, to insure that those debt collectors who refrain from using abusive debt  
13 collection practices are not competitively disadvantaged, and to promote consistent State  
action to protect consumers against debt collection abuses.

14  
**II. JURISDICTION AND VENUE**

- 15  
3. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and  
16 supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1337.  
17 Declaratory relief is available pursuant to 28 U.S.C. § 2201 and § 2202. Venue in this  
18 District is proper in that Defendants transact business here and the conduct complained of  
19 occurred here.

20  
**III. PARTIES**

- 21  
4. Plaintiff JASON MUSSYNISKI (hereinafter “Mr. Mussynski”) is a natural person  
22 residing in Santa Clara County, California.  
23  
5. Mr. Mussynski is a “consumer” as defined by 15 U.S.C. § 1692a(3) and under California  
24 Civil Code § 1788.2. Mr. Mussynski is a “debtor” as defined by California Civil Code §  
25 1788.2.

- 1 6. Defendant PHILLIPS & BURNS, LLC (hereinafter “Defendant Collector”) is a law  
2 office and limited liability company in the State of New York and regularly engages in  
3 the collection of debt with a principal place of business of 461 Ellicott Street, 3<sup>rd</sup> Floor,  
4 Buffalo, New York 14203.
- 5 7. Defendant Collector is a “debt collector” as defined by 15 U.S.C. § 1692a(6) and Cal.  
6 Civil Code § 1788.2.
- 7 8. Defendant ANGELA PRICE (hereinafter “Defendant Price”) is an employee of  
8 Defendant Collector and is engaged in the business of collecting consumer debts in  
9 California for third parties.
- 10 9. Defendant Price is a “debt collector” as defined by 15 U.S.C. § 1692a(6) and Cal. Civil  
11 Code § 1788.2.
- 12 8. Defendant ANGELA RUSSO (hereinafter “Defendant Russo”) is an employee of  
13 Defendant Collector and is engaged in the business of collecting consumer debts in  
14 California for third parties.
- 15 9. Defendant Russo is a “debt collector” as defined by 15 U.S.C. § 1692a(6) and Cal. Civil  
16 Code § 1788.2.
- 17 10. Plaintiff alleges that at all times herein mentioned, each Defendant was, and is now, the  
18 agent, servant, employee and/or other representative of the other Defendants, and in  
19 doing the things herein alleged, was acting in the scope, purpose and authority of such  
20 agency, service employment, and/or representative capacity with the permission,  
21 knowledge, consent and ratification of the other Defendants.
- 22 11. Any reference hereinafter to “Defendant” or “Defendants” or “Defendant Collector”,  
23 without further qualification is meant by the Plaintiff to refer to each Defendant named

1 above.

2                   **IV. FACTUAL ALLEGATIONS**

- 3       12. Plaintiff Jason Mussynski (“Mr. Mussynski”) incurred a consumer obligation for  
4 personal, family or household purposes to Metris/Direct Merchants. The debt was a  
5 result of a consumer credit transaction.
- 6       13. Mr. Mussynski is informed and believes, and thereon alleges that sometime thereafter on  
7 a date unknown to Mr. Mussynski, the debt was sold, assigned, or otherwise transferred  
8 to Ascension Inc.
- 9       14. Ascension Inc. then hired Defendant Collector to collect the debt from Mr. Mussynski.
- 10      15. On or about September 21, 2006, Mr. Mussynski received a collection letter from  
11 Defendant Collector. A true and accurate copy of the September 21, 2006 collection  
12 letter from Defendant Collector to Mr. Mussynski is attached hereto, marked **Exhibit 1**,  
13 and by this reference is incorporated herein.
- 14      16. **Exhibit 1** stated in part:
- 15        “**We are currently reviewing all options available to us to enforce and collect the above-referenced debt, which we may take without further notice to you. Those options may expose you to potentially negative consequences.**”
- 16        **“TO AVOID THIS YOU MUST CONTACT THIS OFFICE IMMEDIATELY”**
- 17      17. **Exhibit 1** falsely threatened immediate legal action not intended and not taken within the  
18 time frame threatened.
- 19      18. **Exhibit 1** made false, deceptive, and misleading statements in an attempt to collect a debt  
20 or collect payment on a debt.
- 21      19. **Exhibit 1** created a false sense of urgency.
- 22      20. The signature line of **Exhibit 1** contained no signature but the name “Angela Price.”

1 (Defendant Price herein).

2 21. On or about October 20, 2006, Mr. Mussynski received another collection letter from  
3 Defendant Collector. A true and accurate copy of the October 20, 2006 collection letter  
4 from Defendant Collector to Mr. Mussynski is attached hereto, marked **Exhibit 2**, and by  
5 this reference is incorporated herein.

6 22. Statements in **Exhibit 2**, such as, "WITHOUT PREJUDICE," falsely represented that a  
7 lawsuit had already been filed against Mr. Mussynski.

8 23. **Exhibit 2** made false statements that Mr. Mussynski agreed to payment arrangements.

9 24. **Exhibit 2** falsely represented that the debt had already been reported to the credit bureaus  
10 by Ascension Inc.

11 25. **Exhibit 2** made false, deceptive, and misleading statements in an attempt to collect a debt  
12 or collect payment on a debt.

13 26. **Exhibit 2** created a false sense of urgency.

14 27. **Exhibit 2** made a settlement offer that contradicted Defendants' threats of immediate  
15 legal action in **Exhibits 1**. Thus, **Exhibits 1** is objectively false.

16 28. The signature line of **Exhibit 2** contained no signature but the name "Angela Russo."  
17 (Defendant Russo herein).

18 29. A review of public records reveal that Defendant does not typically sue in Santa Clara  
19 County.

20 30. Defendant sent **Exhibits 1 and 2** to 40 or more persons in California in the one-year  
21 preceding the filing of this complaint. Plaintiff may seek to amend to add class  
22 allegations at a later time.  
23  
24

**V. FIRST CAUSE OF ACTION**  
(Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*)

31. Plaintiff incorporates by reference each and every paragraph alleged above.
  32. Defendant violated 15 U.S.C. § 1692 et seq., including but not limited to, 15 U.S.C. § 1692e, 1692e(5), and 1692e(10) by attempting to collect a debt through unfair and deceptive means.
  33. Defendants violated 15 U.S.C. §§ 1692e and 1692e(5) by falsely threatening immediate legal action not intended and not taken within the time frame threatened.
  34. Defendants violated 15 U.S.C. §§ 1692e and 1692e(10) by using false, deceptive, and misleading statements in an attempt to collect a debt or collect payment on a debt.
  35. Defendants violated 15 U.S.C. §§ 1692e and 1692e(10) creating a false sense of urgency.
  36. As a result of the above violations of the FDCPA, Defendants are liable to Mr. Mussynski for statutory damages, costs and attorney's fees.

**VI. SECOND CAUSE OF ACTION**

37. Plaintiff incorporates by reference each paragraph alleged above.
  38. The foregoing acts and omissions constitute unfair or deceptive and/or unconscionable trade practices made unlawful pursuant to the California Rosenthal Fair Debt Collection Practices Act, Civil Code § 1788 *et seq.*
  39. Defendants violated Civil Code section § 1788.17, which requires “every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j” of Title 15 United States Code (FDCPA).
  40. Defendants violated Cal. Civil Code § 1788.13(j) by falsely representing a lawsuit had been or was about to be filed against Plaintiff.

- 1 41. Defendants' acts described above were done willfully and knowingly with the purpose of  
2 coercing Mr. Mussynski into repaying the alleged debt within the meaning of Cal. Civil  
3 Code § 1788.30(b).
- 4 42. Pursuant to Cal. Civil Code § 1788.32, the remedies under Civil Code "are intended to be  
5 cumulative and in addition to any other remedies under any other law.
- 6

7 WHEREFORE, Plaintiff prays that this Honorable Court grant the following relief:

- 8 A. Declare the Defendants' conduct violated the FDCPA and the state Act.  
9 B. Statutory damages pursuant to 15 U.S.C. § 1692k, Civil Code § 1788.17, and Civil Code  
10 § 1788.30.  
11 C. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k, Civil Code §  
12 1788.17, and Civil Code § 1788.30.  
13 D. Grant such other and further relief as it deems just and proper.
- 14

15 Respectfully submitted,

16  
17 Ronald Wilcox, Attorney for Plaintiff

\_\_\_\_\_  
Date

19 **DEMAND FOR JURY TRIAL**

20 Please take notice that Plaintiff demands trial by jury in this action.

21  
22 Ronald Wilcox, Attorney for Plaintiff

\_\_\_\_\_  
Date